

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 14 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

DEDA NIKOLL MAKAJ,

Petitioner,

V.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-73244

Agency No. A70-269-082

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted April 3, 2006
San Francisco, California

Before: NOONAN and BYBEE, Circuit Judges, and SCHWARZER^{**}, District
Judge.

We reject petitioner's due process claim. The immigration judge's ("IJ")
conduct was fully consistent with its obligation to develop the record under 8
U.S.C. § 1229a(b)(1), and did not rise to the level of a due process violation.

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The Honorable William W Schwarzer, Senior United States District
Judge for the Northern District of California, sitting by designation.

Compare Melkonian v. Ashcroft, 320 F.3d 1061, 1072 (9th Cir. 2003); and *Perez-Lastor v. INS*, 208 F.3d 773, 782 n.9 (9th Cir. 2000); with *Reyes-Melendez v. INS*, 342 F.3d 1001 (9th Cir. 2003).

Nonetheless, the Board of Immigration Appeals (“BIA”) abused its discretion by failing to consider petitioner’s Convention Against Torture (“CAT”) claim, which was properly raised before the BIA in both Makaj’s notice of appeal and brief. *See Zhang v. Ashcroft*, 388 F.3d 713, 721 (9th Cir. 2004); *Agyeman v. INS*, 296 F.3d 871, 878 (9th Cir. 2002); *Ladha v. INS*, 215 F.3d 889, 903 (9th Cir. 2000). We therefore grant the petition and remand to the BIA for consideration. *See INS v. Ventura*, 537 U.S. 12, 16-17 (2002).

PETITION GRANTED; REMANDED TO BIA.